Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

MOTION FOR RECONSIDERATION DENIED: September 3, 2004

GSBCA 15334-R

LONG LANE LIMITED PARTNERSHIP,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Sam Zalman Gdanski, Suffern, NY, counsel for Appellant.

Dalton F. Phillips and Catherine Crow, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **PARKER**, **HYATT**,[1] and **DeGRAFF**.

PARKER, Board Judge.

Long Lane Limited Partnership (Long Lane) moves the Board to reconsider its decision granting the General Services Administration's (GSA's) motion for summary relief and dismissing the appeal. In the appeal, Long Lane alleged that GSA acted in bad faith in connection with a lease agreement. According to Long Lane, GSA, along with the building's tenant, the Social Security Administration (SSA), conspired to punish Long Lane for pursuing a dispute in connection with another property by (1) terminating the lease, (2) procuring similar space for the same tenants, and (3) purposely drawing the area of consideration for the new space such that Long Lane's building was just outside the area and unable to compete. We agreed with GSA that there was no dispute regarding any material fact and GSA was entitled to judgment as a matter of law. Long Lane Limited Partnership v. General Services Administration, GSBCA 15334 (June 3, 2004). We now deny appellant's motion for reconsideration.

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[1]Judge Hyatt was unavailable and did not participate in the reconsideration decision.

Background

In 1989, Long Lane contracted to lease to GSA approximately 5830 square feet of net usable space on the third floor of the American Square Building in Upper Darby, Pennsylvania. The term of the lease was ten years, with a starting date of January 22, 1990.

The lease provided that, after five years of occupancy, GSA had the right to terminate the lease "at any time by giving at least 90 days' notice in writing to the Lessor." GSA terminated the lease after seven years of occupancy by providing such notice.

At some point, Long Lane became involved in a dispute with the Government involving another property in Upper Darby. According to Long Lane, after the company's position in the other dispute was "vindicated," the building's tenant, SSA, enlisted GSA's help in embarking on a campaign "intentionally, maliciously, [and] specifically to injure" Long Lane. Long Lane alleges that the campaign was carried out by terminating in bad faith the lease that is the subject of this appeal, while at the same time excluding Long Lane from a procurement for similar replacement space.

On April 11, 2003, the Board denied the first of two GSA motions for summary relief. In the motion, GSA moved to dismiss the appeal solely on the basis that the lease's termination clause gave GSA the right to terminate the lease for any reason, including reasons involving bad faith. The Board denied the motion, holding that an implied covenant of fair dealing and good faith is implicitly contained within every Government contract, including the lease at issue in the appeal. Long Lane Limited Partnership v. General Services Administration, GSBCA 15334, 03-1 BCA ¶ 32,247. We also stated, however:

> Proving that the Government acted in bad faith is not an easy task. It is well-established that the courts and boards will not lightly depart from the presumption that Government officials perform their duties in good faith to conclude that a particular Government action was taken in bad faith. Kalvar Corp. v. United States, 543 F.2d 1298, 1301-02 (Ct. Cl. 1976), cert. denied, 434 U.S. 830 (1977); Trans-Atlantic Industries, Inc., GSBCA 10803, 91-1 BCA ¶ 23,412 (1990). In order to overcome this presumption, a contractor must present "clear and convincing evidence" of bad faith. Am-Pro Protective Agency, Inc. v. United States, 281 F.3d 1234 (Fed. Cir. 2002). The burden to establish that Government action or inaction amounted to bad faith is exceedingly weighty -- so much so that "contractors have rarely succeeded in demonstrating the Government's bad faith." Krygoski Construction Co. v. United States, 94 F.3d 1537, 1541 (Fed. Cir. 1996), cert. denied, 520 U.S. 1210 (1997).
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> Though difficult, proving that the Government acted in bad faith is possible. Most tribunals, including this Board, have recognized that such a finding requires evidence of specific animus or malice toward the contractor. That is, "proof of 'bad faith' involves more than sloppy contract administration and requires showing some specific intent to injure the contractor or 'a showing of malice or conspiracy.'" Lopez Machine Works, Inc.,

> ASBCA 45509, 97-1 BCA ¶ 28,622, at 142,910; accord Benju Corp., ASBCA 43648, et al., 97-2 BCA ¶ 29,274, at 145,657, aff'd, 178 F.3d 1312 (Fed. Cir. 1999) (table).
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> As it stands, Long Lane has stated a cause of action because it alleges that GSA terminated the lease maliciously, with the specific intent to injure the contractor, and for no legitimate business reason. Because genuine issues of material fact exist as to whether GSA acted as Long Lane alleges, summary relief is not appropriate at this juncture. If, however, after a reasonable amount of additional discovery, GSA believes that Long Lane lacks specific evidence to support its allegations, the agency may renew the motion.

Id. at 159,445-46.

On April 6, 2004, GSA renewed its motion on the basis that it was entitled to judgment as a matter of law because Long Lane had failed to discover and make a showing of sufficient evidence of bad faith. The Board granted that motion, holding:

> After more than three years of discovery, Long Lane has come up empty with respect to the Government's motivations for terminating the lease. Its proffered evidence, consisting of contract-related documents, deposition testimony, and responses to interrogatories, does not reasonably suggest that GSA terminated the lease with malice or a specific intent to injure the contractor, even with all ambiguities resolved in Long Lane's favor. The evidence amounts to nothing more than appellant's speculation, which, at this stage of the proceedings, is not sufficient to maintain the appeal.
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> At trial, Long Lane would have the burden of proving with "clear and convincing evidence" that GSA acted in bad faith. Long Lane at 159,445. Based on the lack of sufficient evidence, it has become clear that further proceedings would be a waste of time because only one outcome can ensue.

Long Lane, slip op. at 4 (June 3, 2004).

Discussion

Long Lane's motion for reconsideration merely reargues points already made by appellant and rejected by the Board. As we have stated many times, "[a]rguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration." Rule 132(a) (48 CFR 6101.32(a) (2003)); Tom and Tony's Auto Wrecker Service v. General Services Administration, GSBCA 15698-R, 03-1 BCA ¶ 32,217; Gilroy-Sims & Associates, GSBCA 8720-R, et al., 88-3 BCA ¶ 21,085.

Specifically, Long Lane points to its own answer to an interrogatory as support for the motion for reconsideration. In its answer to Interrogatory No. 1, asking appellant for support for appellant's allegation that its lease was terminated in bad faith, one of appellant's principals, Mr. Jim Duffy, states in part as follows:

> The fix was in from the start.
> Lastly, after all this time, I proceed to see Mr. McNichol who tells me he will get me completely out of Upper Darby. Shortly, after that meeting I learn that both of my SSA tenants are vacating. Now, tell me how do long term tenants whom [sic] normally stay decades suddenly terminate when they are receiving contracted services?

Appellant's Answers to Interrogatories at 1. Mr. McNichol, we are told by Mr. Duffy, was "Head of the Republican Party Committee in Delaware County." Id.

We considered carefully this interrogatory answer in rendering our decision to grant GSA's motion for summary relief. Even assuming Mr. McNichol did make this statement to Mr. Duffy, there is no evidence that Mr. McNichol had any relationship at all with either GSA or SSA, much less that he was in any position to influence the agencies' leasing decisions. After three years of discovery, Long Lane failed to discover and make a showing that Mr. McNichol's alleged statement as head of the Republican Party Committee in Delaware County had anything to do with GSA's actions (under a Democratic Administration) in terminating Long Lane's lease. In fact, there is no evidence at all that GSA terminated Long Lane's lease with malice or a specific intent to injure Long Lane. As we said in our June 3, 2004, decision, under these circumstances, appellant's allegations amount to nothing more than mere speculation, which, considering Long Lane's burden of proving with clear and convincing evidence that GSA acted in bad faith, is not sufficient to maintain the appeal. Long Lane has provided us with no good reason to reconsider our decision.

Decision

The motion for reconsideration is **DENIED**.

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ROBERT W. PARKER
Board Judge

I concur:

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MARTHA H. DeGRAFF
Board Judge